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Letter dated 21 August 2006 from the Acting Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached note verbale from Serbia transmitting the attached fourth report of Serbia and Montenegro submitted pursuant to paragraph 6 of resolution 1373 (2001), as well as Serbia and Montenegro's response to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Adamantios Th. **Vassilakis**
Acting Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 31 July 2006 from the Permanent Mission of Serbia to the United Nations addressed to the Counter-Terrorism Committee

The Permanent Mission of the Republic of Serbia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, and with reference to the latter's letter of 20 December 2005 and the Mission's note verbale of 21 March 2006, has the honour to transmit the reply of Serbia and Montenegro concerning the implementation of Security Council resolution 1373 (2001) (see enclosure).

The Permanent Mission regrets that the response is submitted with delay due to technical difficulties.

In addition, it should be noted that the above report refers to the activities of the State Union of Serbia and Montenegro which ceased to exist on 3 June 2006, whereby the Republic of Serbia has continued the international personality of the former State, about which His Excellency Mr. Boris Tadic, President of the Republic of Serbia, informed the Secretary-General in his letter of 3 June 2006.

Enclosure

Report of Serbia and Montenegro on the implementation of Security Council resolution 1373 (2001)

1. Implementation measures

1.1 Regarding the proposed article 155g on 'financing of terrorism' in the Bill on the Amendment of the Criminal Law of the Government of Serbia and Montenegro, and the lack of a specific reference to situations in which no terrorist or criminal act actually occurs, the Committee notes that the International Convention for the Suppression of the Financing of Terrorism has not yet been incorporated into domestic law in Serbia. In this regard, the Committee has received the additional information sent by the Permanent Mission of Serbia and Montenegro to the United Nations enclosed in the letter dated 26 October 2005. However, the Committee considers that shortfall in the criminalization of the financing of terrorism, as described above, remains. Are there plans to incorporate provisions for such cases and, if so, would it be possible to provide to the Committee an estimate of when they might be adopted?

The Republic of Serbia adopted a new Criminal Code (Official Journal of the Republic of Serbia No 85/2005), which began to be implemented on 1 January 2006 and which is the responsibility of the Ministry of Justice. In the new Criminal Code there is a criminal offence of "financing of terrorism" as provided for in article 2, paragraphs 1 and 4 of the International Convention for the Suppression of the Financing of Terrorism.

Regarding the financing of terrorism, article 393 of the Criminal Code (Official Journal of the Republic of Serbia Nos. 85/2005, 88/2005 and 107/2005) stipulates that anyone who provides or collects funds intended for financing the commission of the criminal offences of "terrorism", "international terrorism" and "hostage taking" shall be punished from one to ten years in prison, which means that the perpetrator of the offence of terrorism financing will be punished even if any of the above offences (terrorism, international terrorism and hostage taking) does not occur.

As far as incitement to commit terrorist acts is concerned, article 34 of the Criminal Code provides that anyone who incites another person with the intent to commit a criminal offence shall receive a sentence which such criminal offence carries. Anyone who intentionally incites another person to commit a criminal offence, the attempt of which is punishable by law and which has not actually been attempted, shall be punished as though such a criminal offence has been attempted.

1.2 The Committee would like to point out that, similarly, the legislation concerning terrorist financing under the Criminal Code of Montenegro (articles 447, 448 and 449 of the Criminal Code) deals only with "the commission of criminal acts" (article 449). Article 2, paragraph 3 of the International Convention for the Suppression of the Financing of Terrorism clearly states that for an act to constitute an offence, it is not necessary that the funds actually be used to carry out a terrorist offence. The Committee, once again, would like to acknowledge the additional information sent by Permanent Mission of Serbia and

Montenegro to the United Nations enclosed in the letter dated 26 October 2005. However, the Committee considers that shortfall in the criminalization of the financing of terrorism, as described above, remains in the Criminal Code of Montenegro. Hence the Committee would appreciate receiving information on any steps taken by Montenegro to address this aspect of its legislation.

As already pointed out in the earlier reply submitted by the Permanent Mission of Serbia and Montenegro to the United Nations, dated 26 October 2005, it is stated that the financing of terrorism as referred to in article 449 of the Criminal Code of the Republic of Montenegro has been provided for as a separate criminal offence and that the manner in which this act has been defined as a criminal offence enables it to be viewed in the same way as contained in the relevant provisions of the International Convention for the Suppression of Financing of Terrorism. There is no additional information from the competent Montenegrin ministry on the activities undertaken in Montenegro in this respect.

1.3 Regarding the regulation of alternative financial remittance systems and, in particular, financial transactions performed by intermediaries outside the main financial sector, the Committee understands that, following the adoption of the Constitutional Charter and the abolition of the Ministry of Finance at State Union level, there are still no laws to that effect either in Serbia or Montenegro. Is such legislation being drafted? Could the Government of Serbia and Montenegro please provide a report on the progress made on this issue in both the Republic of Serbia and the Republic of Montenegro?

In the Republic of Serbia there is no legislation related to "alternative financial remittance systems".

In the Republic of Serbia there is a Western Union Service for e-money transfers, which enables persons to receive money from abroad through their agents (commercial banks only). There is no possibility for money transfers from Serbia to foreign countries via Western Union Service.

1.4 The Committee notes that following the adoption of the Constitutional Charter, separate Ministries of Finance and the Economy have assumed responsibility for dealing with money laundering activities in Serbia and Montenegro. The Committee further notes that Serbia inherited the previous Federal Commission (now the Office for the Prevention of Money Laundering Operations) and that Montenegro is establishing a financial intelligence unit (FIU) of its own. Is this unit operational, and could the Government of Serbia and Montenegro please provide a brief outline of its composition and responsibilities?

Based on the Law on the Prevention of Money Laundering, which was passed at the federal level, the Federal Commission for the Prevention of Money Laundering was established and became operational on 1 July 2002. Although the Commission was a federal authority, it did not have competence over the Republic of Montenegro and Kosovo.

After the adoption of the Constitutional Charter, the Commission became a separate body within the Serbian Ministry of Finance, under the name of Administration for the Prevention of Money Laundering. The new Law on the Prevention of Money Laundering came into force on 10 December 2005 and it is in compliance with international standards in this area.

The Serbian Administration for the Prevention of Money Laundering is an administrative FIU. The Administration is authorized to collect, process, analyze and keep the data and information received from obligors and in case the transactions and persons/entities are suspected to be involved in money laundering, to disseminate the data and information to the competent state bodies (police, prosecution office).

As far as the responsibilities carried out by the Republic of Montenegro are concerned, the Law on the Prevention of Money Laundering entered into force on 8 October 2003, while its Administration for the Prevention of Money Laundering was established by the Regulation of the Government of the Republic of Montenegro.

The Administration for the Prevention of Money Laundering is an administrative body of the Government of the Republic of Montenegro and is independent of the Administration for the Prevention of Money Laundering of the Republic of Serbia which is legally the successor to the Federal Administration for the Prevention of Money Laundering.

The relevant State authority responsible for the prevention of money laundering became operational on 5 February 2004, when the Government appointed its Administrator and when it adopted a by-law on the method of providing information on suspect and cash transactions by obligors and on the work of authorized personnel and enforcement of internal audit/control.

The Administration for the Prevention of Money Laundering does not investigate but collects, processes and passes information received from obligors, to the competent State authorities.

The Administration for the Prevention of Money Laundering, in accordance with FATF recommendations, has amended the Law on the Prevention of Money Laundering by incorporating the provisions relating to the prevention of the financing of terrorism and by supplementing the list of obligors with non-profit, non-governmental and charity organisations.

In addition, the Administration for the Prevention of Money Laundering prepares its own data base based on analytical information of all transactions or reports submitted by legal obligors.

Under the regulations in force obligors should regularly check the identity of their clients, both persons and entities, during all transactions performed, and if there is a reasonable suspicion they should suspend such transactions and report it to the Administration for the Prevention of Money Laundering.

The Administration for the Prevention of Money Laundering is in direct contact with the State Prosecutor and the Special Prosecutor, the Ministry of Internal Affairs or the Police Department with a

view to exchaning information and processing data and information gathered operationally or analytically.

1.5 On the subject of legal provisions controlling the import and export of explosives, arms and ammunition that are not intended for use by the armed forces, the Committee notes that the Government of Serbia and Montenegro has decided that the responsibility for licensing, in so far as weapons and military equipment are concerned, will be exercised at the State Union level by a ministry other than the Ministry of Defence (possibly the Ministry of International Relations). Has this decision been taken? If not, the Committee would be grateful to receive details of the relevant provisions currently in effect.

Under article 90, para 2 of the Constitution of the Republic of Serbia in connection with para 1, subpara 2 of the Decision on the obligations of the State authorities of the Republic of Serbia in the excercise of competences of the Republic of Serbia as the successor to the State Union of Serbia and Montenegro (Official Journal of the Republic of Serbia No. 48/06), the Government of the Republic of Serbia issued the Regulation on the financing of the competences transferred from the former Serbia and Montenegro to the Republic of Serbia, by which in article 2, para 4 it is provided that the Republic of Serbia will continue to finance the competencies in the field of foreign sale of arms, military equipment and dual-use goods (controlled goods).

Article 7 provides that the Ministry of Foreign Economic Relations of the Republic of Serbia will take over from the Ministry of International Economic Relations of Serbia and Montenegro the staff needed, as well as the rights, obligations, items, equipment, supplies and archives necessary for the exercise of competences related to the foreign sale of arms, military equipment and dual-use goods (controlled goods).

The State Union Parliament adopted the Law on Foreign Sale of Arms, Military Equipment and Dual-Use Goods on 17 February 2005 (published in Official Gazette of the State Union of Serbia and Montenegro N. 7 and 8/2005). The Law was drafted in cooperation and consultation with representatives of the international community and EU Member States. The Law was assessed as good by the relevant international institutions and their representatives. It aimed at full control over the transfer of weapons, military equipment and dual-use goods (WME/DUG) that might be used for the production of WMD (nuclear, chemical or biological). National WME/DUG watchlists adopted by the Council of Ministers of Serbia and Montenegro constituting an integral part of this Law are fully in conformity with the lists adopted by the EU and the code of conduct of the EU Member States.

As regards WME/DUG export control, buyers, intermediaries and end-users are being strictly scrutinized and evaluated. Special attention is being devoted to the list of countries against which the UNSC has imposed an embargo on the sales and export of WME/DUG. Such dealings with the embargoed countries are strictly forbidden. Restrictions on the transfer of WME/DUG to ECOWAS countries are adhered to (Transfers are allowed only upon EUC agreement and certification by the ECOWAS office). In case of WME/DUG exports, the code of conduct applicable in EU Member States is being respected and complied with.

WME/DUG sales or exports are not permitted to countries seen as either offering sanctuary to criminal groups or sponsoring international terrorism or supporting and assisting it in any other recognizable way. Similarly, WME/DUG exports to countries having shaky regimes and prone to outbreaks of fighting irrespective of the parties being involved, are being carefully considered.

Article 1 of the Law defines terms and conditions under which foreign sale, transport and transit of WME/DUG may take place, defines these notions, establishes the authority responsible for export/import/transport/transit licensing, intermediation and rendering of services in foreing trade, conditions related to licencing, authorisation provided by the authorities in the implementation of the Law, supervision and control as well as penal sanctions imposed in case of violations.

Under article 9 of the Law, foreign sale of watchlist items may take place only if licenced by the Ministry of International Economic Relations of Serbia and Montenegro, or by the Ministry of Foreign Economic Relations of the Republic of Serbia, as stated in the above mentioned Regulation of the Government of the Republic of Serbia.

1.6 Could the Government of Serbia and Montenegro provide an approximate timeline for passage of the draft asylum law?

Among the reforms carried out in the Republic of Serbia concerning the Ministry of Interior, final preparations have been under way for the adoption of laws that are also of relevance for the implementation of the said resolution of the UNSC: the Asylum Law, the Law on the monitoring of the State border and the Law on the Identity Card.

The Asylum Law has been prepared in accordance with international conventions and with the accepted and recognized standards in this field according to the concept that it forms an integral part of the recently adopted Asylum Law of the State Union of Serbia and Montenegro (The Assembly of Serbia and Montenegro adopted the Asylum Law on 21 March 2005, published in the Official Gazette of the State Union of Serbia and Montenegro, 25 March 2005, N[illegible]).

The proposed Asylum Law is before the Parliament and in the final stages of adoption.

1.7 The Committee notes that the Counter-Terrorism Council still operates at the State Union level but that several institutional aspects have changed following the elimination of the Federal Ministry of the Interior and subsequent decentralisation of responsibilities. The Committee would thus appreciate being kept informed of any substantive changes arising from the reconstitution of the Council.

The Government of the Republic of Seriba adopted, on 8 June 2006, the Regulation on the status of individual instutions of the former State Union of Serbia and Montenegro and the services (offices) of the Council of Ministers of Serbia and Montenegro, on the basis of article 90, para 2 of the Constitution of the Republic of Serbia in connection with para 1, subpara 2 of the Decision on the

obligations of the State authorities of the Republic of Serbia in the excercise of the responsibilities of the Republic of Serbia as successor to the State Union of Serbia and Montenegro (Official Journal of the Republic of Serbia No. 48/06). Article 3 of the Regulation acknowledged that all the offices of the Council of Ministers had ceased to exist.

1.8 On the basis of the information provided thus far, it appears that the Government of Serbia and Montenegro is now a party to all the international counter-terrorism instruments with the exception of the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection. The Committee would be grateful to receive an estimated date for the ratification of this remaining convention.

The Convention on the Marking of Plastic Explosives for the Purpose of Detection, done on 1 March 1991, was ratified by the competent authorities of Serbia and Montenegro on 22 October 2005 (Official Gazette of Serbia and Montenegro - International Treaties No. 11/2005 of 22 October 2005).

II. Implementation of resolution 1624 (2005)

In line with operative paragraph 5 of resolution 1624 (2005), that all States report to the Counter-Terrorism Committee on the steps they have taken to implement this resolution, the Government of the Republic of Serbia will provide its reply in twelve months on the implementation of this resolution.

III. Assistance and guidance

3.2. Furthermore, in light of the specific areas related to Serbia and Montenegro's implementation of resolution 1373 (2001) outlined in Section 1 of this letter, and based on Serbia and Montenegro's report to the Committee and on the other relevant information available, including the letter dated 26 October 2005 from Serbia and Montenegro enclosing additional information pertaining to financing of terrorism, the Committee, with assistance from the CTED experts, has conducted a preliminary analysis of Serbia and Montenegro's technical assistance needs in order to identify priority areas in which the Committee believes Serbia and Montenegro may benefit from receiving technical assistance. With the agreement of and in cooperation with the Government of Serbia and Montenegro, the aim is to identify the best possible way for Serbia and Montenegro to benefit from technical assistance in order to strengthen the provision of this resolution.

With regard to combating terrorism financing, the Serbian authority (Administration) plans to establish a project working group consisting of representatives of competent state authorities to make a Law for the Suppression of Terrorism Financing. IMF helped with drafting a document that will

serve as a starting point. The Council of Europe is willing to assist financially and technically the creation of the final version of the Law. It will be a part of the two-year CoE Paco Project.

As for the areas of assistance that you provided, all the topics are welcome and of interest, but there needs to be cooperation with CoE to avoid duplication.